

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

REBECCA N. PETERS-MONE and)	Civil Action No. 4:06-cv-01326-TER
STACEY J. DALBEC, individually and as)	
class representatives,)	
)	
Plaintiffs,)	
)	<u>DEFENDANT VANDERBILT</u>
vs.)	<u>MORTGAGE AND FINANCE INC.'S</u>
)	<u>REPLY TO PLAINTIFFS'</u>
VANDERBILT MORTGAGE AND)	<u>OPPOSITION TO MOTION TO</u>
FINANCE, INC., and CLAYTON)	<u>DISMISS</u>
HOMES, INC.)	
)	
Defendants.)	
_____)	

Defendant Vanderbilt Mortgage and Finance, Inc. ("VMF") respectfully submits this Reply to Plaintiffs' Opposition to VMF's Motion to Dismiss:¹

In their Opposition to the Motion to Dismiss, plaintiffs have asserted, among other things, that they intend to file a Second Amended Complaint that will render moot VMF's Motion to Dismiss the current Amended Complaint. The proposed Second Amended Complaint was attached as an exhibit to Plaintiffs' Opposition.

Plaintiffs' proposed amendment does not save their action from dismissal. First, Plaintiffs have yet to file their proposed amendment and thus their current Complaint remains subject to dismissal for the reasons explained in VMF's Motion to Dismiss and supportive memorandum filed on May 30, 2006. Moreover, after reviewing the proposed Second Amended Complaint, VMF contends that the arguments advanced in its Motion to Dismiss and

¹ Defendant Clayton Homes, Inc. has not yet responded to the original Amended Complaint, and no such response is due until July 17, 2006.

supportive memorandum remain equally applicable as grounds for dismissal of the Second Amended Complaint, and these arguments are reincorporated by reference as if fully set forth herein.

Notwithstanding the arguments stated above, VMF believes that Plaintiffs possess a good faith intent to amend their Complaint as set forth in the proposed amendment. Plaintiffs' counsel has requested that VMF consent to the proposed amendments. VMF acknowledges the liberal standard applied to the amendment of pleadings and, accordingly, has agreed to consent to Plaintiffs' proposed amendment. Defense counsel notified Plaintiffs' counsel that the Defendants will consent to such an amendment without waiving objections to venue and jurisdiction, and provided that the parties can come to an agreement regarding a mutually acceptable consent order.

In the event the court addresses the motion to dismiss the current Complaint, VMF maintains Plaintiffs' current Amended Complaint should be dismissed for the reasons set forth in its Motion to Dismiss and supportive memorandum.

SIGNATURE PAGE ATTACHED

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June 29, 2006
Columbia, South Carolina